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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),

No. C ____-_____ WDB

v.

PRETRIAL ORDER

(Jury Trial)

Defendant(s).

_____ /

On _____, the court held a case management conference in the above-captioned case. For reasons set forth on the record, pursuant to CivilL.R. 16-15(c) and Fed.R.Civ.P. 16, the court hereby ORDERS the following:

1. The jury trial shall begin on _____, at ____ **a.m.**, in Courtroom 4 on the 3rd floor of the Oakland Federal Courthouse.

2. By no later than _____ at _____, the court will hold a hearing on any dispositive motions.

3. On _____ at _____, the court will hold the final pretrial conference in Courtroom 4 of the Oakland federal Courthouse. The conference shall be attended by lead trial counsel for each party. The conference may be held telephonically if the parties desire. The parties must notify the court by 4:00 p.m. the day before that the conference

1 will be held telephonically. Plaintiff shall initiate the conference call and then call
2 chambers at (510) 637-3326.

3 **DISCOVERY**

4 4. Plaintiffs shall disclose their experts by _____. Defendants shall
5 disclose their experts by _____.

6 5. All discovery from experts shall be completed by _____.

7 6. The discovery cut-off date for non-expert discovery is _____.

8 Discovery cut-off date is defined in Civil Local Rule 26-5. No motions to compel
9 discovery may be filed later than 10 days after the discovery cut-off date. The
10 Magistrates' standing order concerning motions and discovery matters is available from
11 the clerk of the court.

12 **WITNESSES AND DEPOSITION TESTIMONY**

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14 7. No later than **[15 court days before the final pretrial conference]**, each party
15 shall file, serve, and separately lodge with chambers a list of witnesses it intends to call
16 on direct examination, in the order that the party expects to call them, with a brief
17 description of the subject areas upon which each witness will testify, a description of the
18 significance (in terms of factual propositions and/or legal theories) of the expected
19 testimony, and an estimate of the time that direct examination will consume. Each party
20 also shall file and serve, with its witness list, excerpts from the deposition testimony of
21 witnesses not testifying in person that may be presented at trial, specifically reproducing
22 the pages and marking the lines of the relevant transcript excerpts. Two copies of the
23 witness list and deposition excerpts shall be lodged directly with chambers. (Full
24 deposition volumes should not be lodged with the court.)

25 8. No later than **[12 court days before the final pretrial conference]**, counsel
26 shall meet and confer to resolve any objections to the use of the deposition excerpts.

27 9. The parties shall be precluded from offering substantive evidence (i.e.,
28 evidence offered for any purpose other than impeachment) by live testimony through any

1 person not listed on the witness list or by deposition testimony not included in the
2 submitted excerpts, and shall be precluded from supplementing the witness list or the
3 deposition excerpts after the deadline set herein for exchanging this material, except upon
4 the express permission of the court. The court will permit the testimony of persons not
5 designated in the witness list or the use of deposition excerpts not timely disclosed only
6 upon a substantial showing that: (a) no party shall be prejudiced or suffer undue
7 hardship, (b) the failure to timely designate the witness or testimony was clearly justified,
8 and (c) the interests of justice otherwise warrant permitting the testimony.

9 10. Counsel ordinarily will be permitted at trial to present foundational matter and
10 factual evidence describing the educational and employment background of witnesses in
11 summary, leading form.

12 EXHIBITS

13 11. The court has attached to this Order the form of exhibit labels to be used by
14 each side. Each side should label their exhibits prior to trial. Plaintiffs shall label their
15 exhibits numerically as follows: “_____, [insert initials -1, -2, etc] ...” Defendants
16 shall label their exhibits numerically as follows: “_____, ... [insert initials -1, -2, etc]”
17 Counsel shall not write in the space provided for “date entered” or “signature.” The court
18 has also attached to this Order an example of an “Exhibit List.” Each party shall create
19 an Exhibit List that is substantially similar to the attached form and, prior to trial, shall
20 list the number of each exhibit the party intends to offer at trial and briefly describe each
21 such exhibit.

22 12. No later than **[15 court days before the final pretrial conference]**, counsel
23 shall exchange all exhibits (premarked), including demonstrative exhibits, that they intend
24 to use as part of their case-in-chief at trial.

25 13. No later than **[12 court days before the final pretrial conference]**, counsel
26 shall meet and confer to resolve any foundational objections to the proposed exhibits.

27 14. Except for purposes of impeachment, the parties shall be precluded from
28 offering in evidence, using as demonstrative evidence, or examining any of their

1 witnesses concerning any exhibit not exchanged by this deadline, except upon the express
2 permission of the court. The court will permit supplementation of exhibits after the
3 exchange date only upon a substantial showing that: (a) no party shall be prejudiced or
4 suffer undue hardship, (b) the failure to timely designate the exhibit was clearly justified,
5 and (c) the interests of justice otherwise warrant the supplemental designation.

6 15. No later than **[2 court days before the start of trial]**, each party shall deliver
7 to chambers, in looseleaf binders, a sufficient number of complete sets of all documentary
8 exhibits to ensure that the judge, his law clerk, and each juror will have their own set of
9 documentary exhibits during trial. These sets are in addition to exhibits counsel will
10 officially submit to the courtroom deputy at trial and any copies of exhibits counsel will
11 want to show witnesses on the stand. All exhibits shall be premarked for identification
12 according to the system set forth herein.

13 **EVIDENTIARY MOTIONS**

14
15 16. The court will entertain foundational objections as to any document only if (1)
16 the document is of real significance in adjudicating the merits of the case and (2)
17 objecting counsel articulates a principled basis for believing that the document is not
18 what it purports to be.

19 17. If a party objects to the admission of evidence on either of the following
20 foundational grounds: (1) the authenticity of a document or exhibit, or (2) the
21 qualifications of expert witnesses, it shall first confer with opposing counsel to attempt to
22 work out the objection. If that is not successful, it may file a motion to exclude the
23 evidence. The motion shall be filed, served, and separately lodged with chambers no
24 later than **[10 court days before the final pretrial conference]**. Failure to file a timely
25 objection may waive a party's right to challenge the admissibility of evidence on
26 foundational grounds at trial. All other motions in limine shall be filed, served, and
27 separately lodged with chambers no later than **[10 court days before the final pretrial**
28 **conference]**.

1 18. No later than **[5 court days before the final pretrial conference]**, oppositions
2 to evidentiary motions shall be filed, served, and separately lodged with chambers.
3 Replies shall be filed, served, and separately lodged with chambers no later than **[2 court**
4 **days before the final pretrial conference]**.

5 **VOIR DIRE**

6 19. No later than **[18 court days before the final pretrial conference]**, counsel
7 shall meet to prepare a **joint** set of voir dire questions. (Note: The court has attached to
8 this order a short list of basic questions which the court will ask the potential jurors in
9 open court.)

10 20. No later than **[10 court days before the final pretrial conference]**, the parties
11 shall file **jointly** a set of voir dire questions they would propose the court to ask. The
12 parties also shall deliver a copy of the proposed voir dire questions directly to chambers.
13 The parties also shall describe any request to conduct limited voir dire by counsel, setting
14 forth each proposed question and justifying why the question should be asked by counsel
15 rather than the court.

16 21. Proposed voir dire questions about which the parties cannot agree also shall
17 be set forth in the parties' **joint** submission. In the parties' **joint** submission, (1) the
18 proponent of the question shall set forth succinctly the basis for his or her request that the
19 question be asked, with citation to authority, and immediately thereafter, (2) the party
20 opposing use of the question shall set forth succinctly the basis for his or her opposition,
21 with citation to authority. Responses to the objections shall be filed, served, and
22 separately lodged with chambers by **[5 court days before the final pretrial conference]**.

23 **JURY INSTRUCTIONS**

24 22. No later than **[18 court days before the final pretrial conference]**, counsel
25 shall meet to prepare a **joint** set of jury instructions.

26 23. No later than **[10 court days before the final pretrial conference]**, the parties
27 shall file their **joint** set of proposed, case-specific jury instructions. The parties also shall
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1 deliver two copies of the proposed jury instructions directly to chambers. The parties
2 shall not submit generic instructions; the court uses the instructions approved by the
3 Ninth Circuit for these purposes.

4 24. Proposed jury instructions about which the parties cannot agree also shall be
5 set forth in the parties' **joint** submission. In the parties' **joint** submission, (1) the
6 proponent of the instruction shall set forth succinctly the basis for his or her request that
7 the instruction be given, with citation to authority, and immediately thereafter, (2) the
8 party opposing use of the instruction shall set forth succinctly the basis for his or her
9 opposition, with citation to authority. Responses to the objections shall be filed, served,
10 and separately lodged with chambers by **[5 court days before the final pretrial**
11 **conference]**.

12 **JOINT PRETRIAL STATEMENTS**

13 25. No later than **[18 court days before the final pretrial conference]**, counsel
14 shall meet to prepare a **joint** pretrial statement as provided for in Civil Local Rule 16-15.
15 The parties shall file the **joint** pretrial statement no later than **[10 court days before the**
16 **final pretrial conference]**. Counsel also shall deliver two copies of the statement
17 directly to chambers.

18 **PRESENTATION TIME LIMITS**

19 26. Counsel are advised that at the final pretrial conference the court will impose
20 time limitations on each side's presentation at trial. Usually, the court imposes "over-all"
21 limits on both sides (e.g., 12 hours each), meaning that each party may use the allotted
22 time in whatever manner the party chooses, e.g., making an opening statement,
23 conducting direct and cross-examination, entering documents, performing
24 demonstrations, making closing argument, etc. Accordingly, counsel shall attempt to
25 generate a joint proposal with respect to what amount of time will be necessary to present
26 this case, and shall be prepared to justify their proposal(s) at the final pretrial conference.

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SETTLEMENT

27. The court strongly suggests that the parties continue discussing settlement of the case up to and during trial, exploring in good faith all reasonable settlement options. If the parties are interested, the undersigned will refer the case to the chief magistrate judge to arrange a settlement conference.

IT IS SO ORDERED.

DATED: October 23, 1998

Wayne D. Brazil
United States Magistrate Judge

Copies to:
All parties
WDB, Stats